DEPARTMENT OF STATE REVENUE

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Letter of Findings Number: 10-0242P
Sales Tax and Withholding Tax-Penalty
For the Periods September 2009 through February 2010

NOTICE: Under IC § 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUE

I. Tax Administration–Penalty.
Authority: IC § 6-8.1-5-1; IC § 6-8.1-10-2.1; 45 IAC 15-11-2.
Taxpayer protests the imposition of the ten-percent negligence penalty.

STATEMENT OF FACTS

Taxpayer is a municipality located in Indiana. Taxpayer did not file monthly sales tax or withholding tax returns in a timely manner for several periods in 2009 and 2010. The Indiana Department of Revenue ("Department") imposed a ten-percent penalty for respective late returns. Taxpayer protested the penalty assessments.

I. Tax Administration–Penalty.

DISCUSSION

Taxpayer protests the imposition of the ten-percent negligence penalty on Taxpayer's failure to remit its sales tax and employee withholding tax in a timely manner.

Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC § 6-8.1-10-2.1. The Indiana Administrative Code, 45 IAC 15-11-2 further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

(1) the nature of the tax involved;
(2) judicial precedents set by Indiana courts;
(3) judicial precedents established in jurisdictions outside Indiana;
(4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
(5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

Taxpayer has provided sufficient information to conclude that the penalties imposed on its late sales tax payment for December 2009 should be waived.

However, the penalties imposed for sales tax and withholding tax for September 2009 through February 2010 (except for sales tax for December 2009) are the result of taxes imposed on a "best information available" basis pursuant to IC § 6-8.1-5-1 (b). For these periods, Taxpayer has not provided sufficient evidence to demonstrate reasonable cause to justify penalty waiver.

FINDING

Taxpayer's protest is sustained for sales tax for December 2009 and denied for all periods and tax types.

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An html version of this document.